

REMARKS

The Examiner is respectfully requested to reconsider the present application in response to the above amendments and the following comments. Claims 1, 2, 4-10, 12 and 14-18 are present in the application, and each of these claims is submitted to be patentable.

Claim numbering

As filed, the application did not include a claim 13. Consequently, originally misnumbered claims 14-19 have been renumbered as claims 13-18, i.e., claims 14-19 have been treated as if they had originally been correctly numbered as 13-18. See M.P.E.P. § 608.01(j).

Section 112

Claims 7 and 8 were rejected only on formal grounds as being indefinite. The Examiner stated that the claim limitation in claim 7 concerning a check valve is unclear. Reconsideration of the rejection of claims 7 and 8 is requested.

A check valve is a device that is well known to anyone of ordinary skill in the field of tubs, plumbing, etc. For one example, Merriam-Webster's Dictionary (at <http://www.merriam-webster.com/dictionary.html>) defines a "check valve" as "[a] device which permits fluid flow only in one direction". Similarly, the glossary at the web site PoolSpa.com defines a "check valve" as "[a] mechanical device in a pipe that permits the flow of water or air in one direction only".

As seen in FIGS. 3 and 7 of the application drawings, and as described at paragraph 0031 of the specification, a check valve cartridge 88 is secured in the inlet flow passage 56, within the side entry inlet fitting 54. A valve member 94 is urged by a spring 98 against a seat 96. When inlet pressure exists, the valve member 94 compresses the spring 98 and moves away from the seat 96 in order to permit flow into the tub, but closes against the seat 96 to prevent reverse flow in the opposite direction.

It is believed that the meaning of claim 7 would be perfectly clear to one of ordinary skill, and that claims 7 and 8 comply fully with the requirements of 35 U.S.C. §112. Allowance of these claims is believed to be appropriate.

The Obviousness Rejections: Benne et al. and Barhydt, Sr.

Claims 1, 2, 4-6, 9, 10, 12, 13, 14, 17 and 18 were rejected for obviousness over the Benne et al (6,292,958) and Barhydt, Sr. ((5,114,072) references. Reconsideration is requested.

A combination of the teachings of the Benne et al and Barhydt references fails to render obvious the subject matter of independent claim 1. Claim 1 is directed to a tub filler and overflow assembly wherein two flow passages, specifically an overflow water passage and a water inlet passage, extend through inner and outer bodies of the assembly. A fastener connects the inner and outer bodies and draws them together to clamp toward opposed faces of the tub wall. In the embodiment illustrated in the application, a hollow screw 30 is engaged by a nut 32 in order to connect the inner body 16 and the outer body 18 and to draw them toward one another so that they clamp toward opposite faces 14A and 14B of the tub wall 14.

The mounting arrangement of the Benne et al assembly is very different. In the Benne et al device, a fastening ring 12 is threaded onto threads 7b of an outer housing section 7. This holds the section 7 against the tub wall (Col. 3, lines 14-20 and 57-64). The inner housing section 15 is then “slipped on” to the fastening ring 7, where it is held by cams or tabs (Col. 3, lines 34-39). An additional retention element 14 prevents the inner section 15 from rotating.

The Examiner stated that the Benne et al reference discloses “inner and outer bodies 7, 15; a fastener 12 for connecting the bodies and adapted to draw them together to clamp toward opposed faces of tub wall 12 . . .” (Office Action, Section 4, page 2). It is submitted that this is not what is disclosed in the reference. The Benne et al fixture does not include inner and outer bodies that are connected and drawn toward one another by a fastener. The Benne et al fastening ring 12 clamps the outer body 7 toward the tub wall, but does not connect the inner body 15 to the outer body 7. In addition, the Benne et al fastening ring 12 does not draw the outer body 15 toward the inner body 7, nor does it clamp the outer body 15 against the tub wall.

This deficiency of the Benne et al reference is not overcome by other prior art including the Barhydt reference. There is no suggestion outside of the applicant’s own disclosure for the mounting system of claim 1 for an overflow and tub filler assembly. Claim 1 is submitted to be patentable for this reason.

Claim 1 is also directed to a tub filler and overflow assembly having an outlet and a flow conditioning assembly defining an elongated water discharge opening having a longitudinal axis that is generally parallel to the tub wall. The Benne et al and Barhydt references relied upon in the rejection disclose only circular water discharge openings. There is no suggestion whatsoever of a combined overflow and tub filler assembly having an elongated water discharge opening generally parallel to the tub wall. The

conclusionary statement at page 3 of the Office Action that it would be obvious to provide a spout to have “any shape” is submitted to fall far short of meeting the burden of showing a prima facie case of obviousness. For this additional reason, claim 1 is believed to be patentable.

Claims 2, 4, 5, 7 and 8 are dependent from independent claim 1 and are submitted to be patentable for the same reasons as claim 1.

Claim 2 is further limited to a water discharge opening and a screen assembly that are generally rectangular, as well as being elongated and oriented generally parallel to the tub wall. The applied Benne et al and Barhydt references do not disclose or suggest any shape other than a circular water discharge opening. Claim 2 is believed patentable for this additional reason.

Like claim 1, independent claim 6 is also directed to a tub filler and overflow assembly wherein an overflow water passage and a water inlet passage extend through inner and outer bodies of the assembly, with a fastener connecting the inner and outer bodies and drawing them together to clamp toward opposed faces of the tub wall. Like claim 2, claim 6 is directed to an assembly having an elongated, generally rectangular water discharge opening. For the same reasons set forth above in connection with claims 1 and 2, it is submitted that independent claim 6 is patentable.

Claim 6 is further limited to additional structure not disclosed and not suggested by the references. Claim 6 is directed to an assembly including a screen assembly, a discharge opening and a flow straightener, all of which are elongated and generally rectangular with opposed shorter and longer walls. In addition, the flow straightener is defined as including a plurality of barrier vanes that extend between the shorter walls, parallel to one another and to the direction of flow.

The references disclose only circular flow straighteners. The element 5 of the Barhydt aerator is circular. The barriers 5c of Barhydt extend radially. They do not extend between opposed longer walls of a rectangular flow straightener, and they do not extend parallel to one another. It submitted that the disclosure of a circular aerator is unrelated to structural and functional requirements of an elongated and generally rectangular flow conditioning assembly. Claim 6 is believed to be patentable for this additional reason.

Claims 9, 10, 12 and 14-18 are dependent directly or indirectly on claim 6 and are submitted to be patentable for the same reasons.

Claim 14 is directed to an assembly wherein the screen laminas of the screen assembly are attached together, as by spot welding or sintering. The prior art fails to disclose or to suggest this feature, and claim 14 is believed to be patentable for this additional reason. Claims 16-18 are dependent on claim 14, and are submitted to be patentable for all of the same reasons.

The Obviousness Rejections: Newell and Shames et al.

Claims 1, 4-6, 9, 10, 12, 13, 14, 17 and 18 were apparently rejected for obviousness over the Newell (399,691) and Shames et al (3,684,191) references.¹ Claims

¹ A purported rejection over Newell and Shames et al. appears at the beginning of Section 7, page 6, of the Office Action. However the remaining text of Section 7 seems to refer to the Benne et al reference rather than the Newell reference. No explanation of any relevant teaching of Newell was included, see M.P.E.P § 706.02(j)(A). On March 14, 2004, applicant filed by fax a Request for Clarification, to which no response has been received. Applicant responds here to a rejection based on Newell and Shames et al, although the basis of the rejection is unclear in the Office Action.

15 and 16 were similarly rejected, further in view of the Parkinson (3,730,439) reference. Reconsideration is requested.

The Newell reference is not more pertinent to claims 1 and 6 than the Benne et al reference discussed above. The manner in which the Newell fixture is configured and mounted is very different from the arrangement claimed in all of the claims pending in the application. In Newell, a nozzle 7 is threaded into an outlet branch N of confluent pipes G, H (Col. 1, lines 35-37). The overflow passage does not extend through the nozzle 7. Newell does not disclose inner and outer housings that contain overflow and water inlet passages, and that are connected by a fastener that draws them toward one another.

The Newell reference is unclear as to the shape of the water discharge opening. The discharge opening of Newell is inclined to vertical as seen in FIG. 2. Therefore it is not viewed head on in FIG. 1. In any case, it is not disclosed as elongated and generally parallel to the tub wall. It does not appear that the Newell spout could accept an aerator. There is no suggestion in the prior art to add an elongated or a rectangular aerator to the Newell spout.

The Shames and Parkinson references are no more pertinent than the Barhydt reference discussed above because they disclose only circular aerators. With respect claim 6 and its dependent claims, the references in fail to disclose rectangular screen assemblies and a rectangular flow straightener with vanes extending between longer walls of the flow straightener.

All of the claims pending in the application are submitted to be patentable over Newell, Shames et al. and Parkinson for at least all of the reasons discussed above with respect to Benne et al and Barhydt

Conclusion

Claims 1, 2, 4-10, 12 and 14-18 are present in this application. It is submitted that each of these claims is patentable for the reasons set forth above. Allowance of the present application is therefore respectfully solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Philip M. Kolehmainen", is written over a horizontal line.

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